SINGAPORE REPORTS

Roseli bin Amat & Ors v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) – CRIMINAL APPEAL NO 13 OF 1986
THEAN AND CHUA JJ AND CHAO HICK TIN JC
31 MARCH 1989

Criminal Procedure – Appeal – Allegation that accused not given fair and impartial trial – Trial judge prejudiced and having made up his mind before conclusion of evidence

Evidence – Trial judge – Role of trial judge in considering evidence before him

The appellants were four policemen who were convicted of raping a Thai prositute whom they had arrested. They were sentenced to various terms of imprisonment and ordered to be given strokes of the rotan. The appellants appealed against their convictions. They appealed not against the reasoning of the trial judge but against incidents occurring during the trial. It was claimed that the judge had intervened excessively on such a scale that the appellants were deprived of a fair and impartial trial. The interventions of the judge were grouped into three catergories: excessive interruptions by the judge in the examination and cross-examination of witnesses, thus hampering the work of defence counsel; unfair and improper cross-examination in a hostile manner of the appellants by the judge; and making adverse comments that strongly indicated that the judge had pre-determined the guilt of the appellants before considering all the evidence before him.

Held, allowing the appeal:

(1) As to the first catergory of interventions, ie excessive interruptions, some of these were attributable to the tedium of a long trial. On the whole, although the interventions were numerous, they had not hampered counsel in presenting fairly the defence case.

(2) As regards the second group of interventions, some of these were made with a view to seeking clarification or to follow up questions previously asked by counsel for either side. There were some questions the judge should have refrained from asking, but these alone were not sufficient to warrant condemning the trial as unfair or a mistrial.

(3) The judge had during the course of the trial, even before the prosecution had closed its case, indicated that he was certain that the complainant had told the truth. When the defence was called, the judge in questioning the appellants prematurely expressed his disbelief in their testimony.

(4) The third type of interventions pointed very strongly to the fact that the judge had not kept an open mind throughout the trial and had not weighed the evidence carefully. He had determined the issues adversely against the appellants long before they had presented their case. The convictions could not therefore stand.

(5) Having regard to the fact of the long lapse of time since the alleged offence and the fact that the appellants had already served a term of three years' imprisonment, it would be unfair to subject them again to a long trial on the same charges. A new trial would not be ordered.

Case referred to

1 *Haw Tua Tau* v *PP* [1981] 2 MLJ 49 (refd)

Peter Fernando for the first appellant.
Vijay Kumar for the second appellant.
S Vellupillai for the third appellant.
Mahadi Abu Bakar for the fourth appellant.
Jennifer Marie (Ms) for the Public Prosecutor.

Cur Adv Vult

Thean J (delivering the judgment of the court): The appellants were charged and convicted in the High Court of rape of one Orranuch Nilprang ('the complainant'). The first appellant was charged with and convicted of one count of rape; the second appellant two counts of rape; the third appellant two counts of rape, and the fourth appellant one count of rape. The first appellant was sentenced to a term of imprisonment of 14 years and 15 strokes of cane; the second appellant to a term of imprisonment of 13 years and 10 strokes of cane on each charge, the sentences of imprisonment to run concurrently; the third appellant to a term of imprisonment of 12 years and 10 strokes of cane on each charge, the sentences of imprisonment to run concurrently, and the fourth appellant to a term of imprisonment of 10 years and 10 strokes of cane. All the appellants appeal against their convictions and sentences.

The complainant is a Thai national and entered Singapore illegally sometime in July 1985 and at the material time was a prostitute. She occupied a room on the fifth floor of an uncompleted block of flats, Block 172, Yishun Avenue 7 and carried on her business on the fourth floor, and her customers were mainly Thai construction workers. The appellants at the material time were members of the police force attached to the Paya Lebar Police Station and were crew members of a police task force patrol team; the first appellant was the leader of the team with the second appellant as his deputy.

On the night of 17 October 1985 the complainant after entertaining two Chinese clients in the room on the fourth floor returned to her room on the fifth floor. There she found her two friends, Thai male construction workers; one was drinking and the other was sleeping on her bed. She changed and went to lie down on the floor beside the bed listening to her tapes.

At about 2 am, on 18 October 1985, the four appellants went to Block 172, Yishun Avenue 7 and conducted a search on the uncompleted block of flats. They saw light from a room on the fifth level and they went up there to investigate. The complainant was in that room and so were the two male Thai workers. When the complainant heard a knock on the door and sensing that it was a police raid she scaled a window and hid herself on the window ledge clinging to the metal scaffolding. One of the male Thai workers then opened the door and the appellants entered and conducted a search. They found the complainant and ordered her to return to the room which she did. On returning to the room her purse which

contained S$60 and 5,000 Indonesian rupiahs slipped out of her pocket and fell on the floor. The first appellant picked it up and put it in his pocket. He then recorded on an envelope particulars of the two male Thais who had with them their work permits. The first appellant then handcuffed the complainant and detained her. The complainant was taken down to the car park where the police car was. There, the appellants, after a discussion among themselves, took the complainant into the car. The first appellant drove the car with the second apellant seated next to him, and the third and fourth appellants were seated at the back with the complainant between them. Once inside the police car one of the appellants removed her handcuffs. The first appellant drove the police car along Yishun Avenue 7 and turned into Yishun Avenue 2 and from there to an unnamed track until they reached a vacant hut. On arrival there, the appellants and the complainant all alighted from the car. Subsequently the appellants each took turn to have sexual intercourse with the complainant in the hut; the second and the third appellants each had sexual intercourse with her twice. Thereafter, the complainant was brought out from the hut and the first appellant handed her a piece of paper on which was written the second appellant's name and telephone number. The first appellant asked the complainant to telephone 'Ali' (referring to the second appellant) at 11 am later that morning.

The complainant was then driven back to the construction site at Yishun Avenue 7 where the appellants left her near the foot of Block 172. The complainant proceeded to the fourth level of Block 172 and saw her friend AO Pantusavan ('AO'), to whom she related that she had been raped by the four policemen. She was crying in front of AO; her hair was in a mess and she was smelling of spermatozoa. Later she returned to her room on the fifth level where she washed and cleaned herself and then went to bed. She woke up at about 1 pm and went to the fourth level again, discussed the matter further with her friend AO and decided to lodge a police report. Accompanied by her friend AO, she lodged a police report at the Criminal Investigation Department. The four appellants in consequence were arrested and charged, and were tried jointly.

The case of the prosecution was that the complainant was arrested and handcuffed on the fifth level of Block 172, taken down to the car and brought to the desolate vacant hut at about 2.30 am and was then raped by each of the four appellants in turn. The evidence of the complainant was that the first appellant took her into the hut, forced her to take off her clothes, and out of fear she submitted to having sexual intercourse with him. She said she was frightened. Thereafter, also out of fear, she submitted to having sexual intercourse with each of the other appellants in turn; in like manner, that is, out of fear, she submitted to having sexual intercourse a second time with the second and third appellants respectively.

All the appellants raised the defence of consent. They admitted that the complainant was brought to the vacant hut and that they each had sexual intercourse with her; the second and third appellants admitted that they each had sexual intercourse with her twice. But they said that the complainant consented to the acts of sexual intercourse. The consent, according to the appellants, arose out of a bargain made between the complainant and the first appellant. The first appellant said that when the complainant was alone with him on the fifth floor of the block of flats, she fondled his private part and spoke to him in a mixture of broken Malay and Thai and pleaded with him to release her. When she was brought down to the car park she offered him sexual favours in exchange for her release. Though her hands were handcuffed behind, she made sexual gesture with her fingers at the back, and when they all got into the car his colleagues released her handcuffs. That offer though made to the first appellant was made in the presence of the other appellants. At that time the first appellant had not decided to take up the offer; but while he was driving the car to the police station he decided to accept the complainant's offer and he thereupon made a 'U' turn and drove the car to the hut. There, after he had sexual intercourse with her, he asked her on behalf of the other appellants and she agreed to have sexual intercourse with them also. The second, third and fourth appellants said that they did not force her and that she consented to having sexual intercourse with them respectively; she smiled and laughed with them.

The learned judge at the conclusion of the hearing found the appellants guilty of the offences with which they were respectively charged and convicted them accordingly; he sentenced each of them to the term of imprisonment and caning as we have described.

The arguments put forward on behalf of all the appellants in the forefront of the appeal were directed not against the reasoning and finding of the learned judge in his judgment but against the incidents that took place during the trial. They complained that the learned judge throughout the trial persistently interfered with the presentation of their defences and interrupted their counsel excessively. The interventions were on such scale both numerically and in length and hostility that the appellants were deprived of a fair and impartial trial. Mr Fernando, who argued this ground of appeal on behalf of all the appellants, grouped the interventions of the learned judge roughly into three categories:

(i) excessive interruptions by the learned judge in the examination and cross-examination of witnesses by counsel with the consequence that counsel were un-

duly hampered in the cross-examination of the prosecution witnesses and in the examination of their own clients;

(ii) unfair and improper cross-examination by the learned judge of the appellants in a hostile manner including disallowing them to give evidence in their own way; and

(iii) making adverse comments or observations which strongly indicated that the learned judge had closed his mind and pre-determined the guilt of the appellants prior to considering all the evidence before him.

We now consider these categories of interventions seriatim. In respect of the interruptions complained of Mr Fernando drew to our attention the specific instances where, he said, the learned judge interrupted counsel in the cross-examination of the prosecution witnesses and the examination of the appellants. We have examined the transcripts and the interruptions referred to and also the relevant parts of the transcript leading to the interruptions, and are compelled to say that the counsel who conducted the defences before the learned judge must share substantially the blame. A considerable number of the instances, which we have examined, arose out of counsel delving on minuscule points, points of dubious relevance or points which had been covered by the questions asked by other counsel preceding. The learned judge's interruptions on these instances, we find, were wholly justified. However, we agree that the interruptions by the learned judge were numerous – more than we would normally expect – and there were some occasions in which he should have refrained from interrupting. On the other hand, it must be appreciated that this was a fairly long trial which occupied about 18 days. The four appellants were separately represented by four counsel and each of them cross-examined the witnesses in turn. The case for the prosecution occupied seven and a half days and after the defence was called the trial continued for another ten days. The examination-in-chief of the complainant took two days and she was then cross-examined by the four counsel in toto for three and a half days – some of the questions were wholly irrelevant and there were overlappings in the areas of cross-examination of the complainant and other witnesses. It is therefore understandable that there were some occasional outbursts of impatience by the learned judge, which, in our view, were attributable to the tedium of a long trial. It should also be noted that some of these occasions were not really interruptions; the learned judge was taking down notes of evidence and he was merely repeating what the witnesses had previously said. Counsel had on some occasions in spite of the interruptions insisted on pursuing their points and were allowed to do so. On the whole, though we do not agree with or condone some of the interruptions of the learned judge, we are unable to accept the contention that the interventions by the learned judge, though numerous, had hampered counsel in examining or cross-examining the witnesses and rendered it impossible for them to present fairly the case for the defence.

In respect of the second category of intervention, Mr Fernando also listed out numerous instances where the learned judge asked questions of the witnesses and, in particular, of the appellants. We have examined the transcripts and are of the opinion that in quite a number of occasions the learned judge was entitled to ask the questions which he asked. Some of the questions were asked with a view to seeking clarification and some were asked in order to follow up the questions previously asked by the prosecution or the defence. It is true that there were questions which, in our view, he should refrain from asking, but here again we do not think these questions alone are sufficient to warrant a condemnation of this trial as unfair or a mistrial.

We now turn to the last category of intervention. Here again Mr Fernando pointed to numerous observations or comments made by the learned judge to show that the learned judge had failed to keep an open mind. We have examined these passages of the transcript referred to and found that a fair number of these observations or comments are truly innocuous; but there are some which cause us some concern. It is necessary to examine these parts of the transcript in some detail and in this connection it is necessary to set out these extracts verbatim.

The following passages from the transcripts give the impression that the learned judge at the early stage of the trial had made certain findings or reached certain conclusions on the facts which had yet to be established. During the cross-examination of the complainant by counsel for the second appellant, the learned judge in directing to counsel that the point he cross-examined was immaterial made the following remarks (at p 237 of the record of appeal):

> I have done rape cases where the woman took the rapist's penis into her vagina because she was afraid she was going to be killed or injured by the rapist. You see what I mean? So that does not mean a thing. She was in the case completely in the power of the four policemen. You see what I mean? Carry on.

Later, during the cross-examination of the complainant by counsel for the first appellant the following exchanges took place between him and counsel (at p 353 of the record):

> Q: Now when you returned to your flat, after your visit to the fourth floor, can you remember what time it was?
> A: About 11 pm, sir.
> Q: And uncle Onsee was drinking?
> A: He was lying down – uncle Onsee.

Q: Not drinking?
A: I saw the bottle still lying around.
Q: Was he drinking or not?

His Lordship: Why do you worry about this, Mr Fernando? She has corroborated everything she said before up to now.
Mr Fernando: All right.
His Lordship: You see, this is the fourth time hearing it! All the other three went through this already.
Mr Fernando: Thank you.
His Lordship: And the more you ask her, the more she confirms so. I am dead certain that what she has been telling me is the truth, you see, so far.
Mr Fernando: I want to know whether ...
His Lordship: I know ... I mean you are making me realize that she's a witness of truth because she has said the same thing four times.

Again, at a slightly later stage, during the cross-examination of the complainant by counsel for the first appellant on the question why she did not produce the pass to prevent arrest, the following exchanges took place between the learned judge and counsel (at p 364 of the record):

His Lordship: Her hands were handcuffed behind her back.
Mr Fernando: She was busy doing something and later she indicated sixth floor by showing her hand.
His Lordship: She said she could not point back because her wrists were handcuffed behind her back.
Mr Fernando: Please my Lord. If you are being arrested, if the police are there asking you for the passport, couldn't you say the passport is here?
His Lordship: I am telling you I don't believe the story about her showing the sexual sign with her fingers with her hands handcuffed behind her back.
Mr Fernando: Since your Lordship doesn't even believe it was possible or not ...
His Lordship: Carry on.

It should be noted that at this stage of the trial the prosecution had not closed the case and the defence had not been called. Therefore the remarks by the learned judge to the effect that the complainant was 'completely in the power of the four policemen' and that he was certain that what she had been saying was the truth, and his expression of his disbelief of the story that the complainant showed sexual sign with her fingers while her hands were handcuffed behind her were premature and unwarranted.

When the defence was called and the appellants gave evidence, there were occasions when the learned judge again prematurely expressed his disbelief of the appellants, and the following instances seem to demonstrate the point:

(i) At a certain stage of the examination-in-chief of the first appellant, where the learned judge interrupted, the following exchange took place between him and the first appellant (at pp 473 to 474 of the record):

His Lordship: I know. If your son or your colleague tell you something, must you ask everybody, 'Is it the truth?' This, I believe, is just an exaggeration.
A: That is the truth, my Lord.
Q: I know. Everybody tells the truth in this court. Nobody tells me any lie.
A: That is why I made a request to swear on the Koran.
Q: That is the more reason for me to disbelieve you because a Muslim never uses the Koran that way. That is why we had never used the Koran in the court for this purpose.
A: That is right, but I am telling the truth.
Q: I know, you are trying to impress me, you see. That is why you came and said, 'I want the Koran', you see. I always find that the people who pretend to be very religious are the biggest crooks there are.

(ii) At a later stage of the examination the learned judge said of the first appellant (at p 557 of the record):

His Lordship: You see, Mr Roseli, that time nothing had happened yet.
A: That's right, my Lord.
Q: And you took down their names but why couldn't you have written down their names either in your pocket book or in your log book unless, of course, you had intended from the beginning to rape this woman? That is why, isn't it?
A: But the point is that I did not know there was a woman.

(iii) The second appellant at the commencement of the examination-in-chief requested to swear by the Koran which was rejected by the learned judge and the following exchanges took place (at pp 723 to 724):

His Lordship: I say no. I am no fool here. You are making this empty gesture. It is just an empty gesture because you are not a God-fearing man. If you were God-fearing you wouldn't have committed adultery as you did.
Mr Kumar: He is not married.
His Lordship: But in the Muslim faith it is adultery. If you don't understand the Muslim faith, Mr Kumar, shut up.
2nd Accused: I am telling the truth.
His Lordship: If you were a God-fearing man you would not have committed adultery with a prostitute. This man would not have stolen money from her with you. You would not have brought disgrace to yourself and to your uniform by having sexual act with female suspect with or without her permission, with or without her consent, so don't try and bluff me that you are God-fearing and you want to swear on the Koran. It does not impress me because I understand these things. In any case it is a sin to swear on the Koran. All right, carry on.

(iv) At a later stage the learned judge reprimanded the second appellant as follows (at p 774 of the record):

His Lordship: You must tell me the truth. I am not impressed by your humbug here. How could

you enter into your log sheet the particulars if you did not carry your log sheet?
A: We can write it down in our pocket book.

(v) Subsequently, at a slightly later stage, the learned judge questioned the second appellant thus (at p 780 of the record):

His Lordship: So if you lied to avoid disciplinary actions, you would lie even more to avoid a charge of rape, isn't it?
Mr Fernando: My Lord, it is unfair.
His Lordship: No, I am asking you.
Mr Fernando: He doesn't know it was raping.

We turn to another aspect of the complaint. The defence of the appellants was that there was consent on the part of the complainant and her consent originated from a bargain or understanding reached with her. The learned judge, however, appeared to have rejected such bargain or understanding even before the close of the defence. This is evident from following occasions:

(i) During the cross-examination of the second appellant by the deputy public prosecutor the following took place between the learned judge and the second appellant (at p 806 of the record):

A: My understanding is that, my Lord, the offer was made to all of us.
Q: At the very most you imagined that the offer was made to you? It was your imagination?
His Lordship: The truth is he never had such an understanding.
DPP: I am coming to that, my Lord.
A: The offer was made to all of us.
His Lordship: Yes, that's what you said. We are suggesting the truth is, there was no such offer and you never had such an understanding?
A: She did make the offer.

(ii) During the re-examination of the third appellant by his counsel the following exchange took place between the learned judge and counsel (at p 1005 of the record):

His Lordship: There was no such understanding because if there was rape, then you whistle your turn next but if you are having sexual intercourse, you don't whistle for the next man to come!
Mr Vellupillai: There is no fix rule.
His Lordship: We are all adults. We've got to think what actually happened, you see?
Mr Vellupillai: That is precisely the thing we are trying to do.
His Lordship: The whistling shows that it is unlikely to be an amicable sort of thing, you know? Carry on. Unless of course, you happened to be a pimp.
Mr Vellupillai: Unfortunately all four of them had a sort of understanding.
His Lordship: Carry on.

Again, the learned judge appeared to have formed his view that the second appellant had the intention of raping the complainant even before the close of the defence. At a certain stage during the re-examination of the second appellant the following exchanges between the learned judge and counsel took place (at p 863 of the record):

Mr Kumar: Of course, my Lord, these two particulars were taken on a piece of paper because it was a dark flat and it was also dark downstairs where the car was parked.
His Lordship: I know but the position is this. When did he form the intention of raping this woman. You see what I mean?
Mr Fernando: What I think my learned friend is trying to say is even if they made honest entries up to the time of the arrest, even of the girl in the log sheet, it would have made no difference because he could obtain a fresh one, re-write the false particulars and destroy the original honest entries.
His Lordship: True, true but the point is, it proves that they had the intention of raping this woman from the very beginning.

In view of the remarks or observations which we have examined, it is doubtful whether the learned judge had fairly evaluated the evidence of the complainant and the appellants. They point very strongly to the unhappy fact that the learned judge did not keep an open mind throughout the trial and examine and weigh carefully the evidence of the complainant and that of the appellants. These unsatisfactory features of the trial were further compounded by the following passage of his judgment:

> At the end of her [complainant's] cross-examination I was convinced that Orranuch Nilprang was a witness of truth and that she had submitted to the four of you under duress as she was afraid that you would either hurt or kill her.

On this, the learned judge, with respect, was clearly in error. We wish to repeat what Lord Diplock said in *Haw Tua Tau* v *PP*[1] (at p 51):

> ... Whoever has the function of deciding facts on the trial of a criminal offence should keep an open mind about the veracity and accuracy of recollection of any individual witness, whether called for the prosecution or the defence, until after all the evidence to be tendered in the case on behalf of either side has been heard and it is possible to assess to what extent (if any) that witness's evidence has been confirmed, explained or contradicted by the evidence of other witnesses.

It is true that the learned judge said that at the end of the case he scrutinized again the evidence adduced by the prosecution and that of the appellants. However, he ought not to have come to any definite conclusion, which he appeared to have done, on the credibility of the complainant – and that was purely on her own evidence – and on other matters which we have discussed until he had heard all the evidence adduced by the prosecution and evidence adduced by the defence. Only then would he be in a position to assess or evaluate fairly the evidence before him and make findings of facts and finally arrive at a conclusion.

We now turn to the final question whether the convictions in the circumstances can stand. This is far from being a case of a couple of isolated imprudent remarks made injudiciously by a trial judge in unguarded moments in the course of a long trial – such incidents we can well appreciate and understand. The instant case unfortunately is much more than that. The passages of the transcript which we have reviewed and in which are found definite views and findings of the learned judge on material issues – some of them at an early stage of the trial – are far too compelling: they indicate starkly that the learned judge had pre-determined these material issues adversely against the appellants long before they had fully presented their case. With great reluctance, we have reached the unavoidable conclusion that the convictions should not be allowed to stand. Accordingly, we allow the appeal and quash the convictions and the sentences. We have considered whether we should now order a new trial. In our judgment, having regard to the long lapse of time since the alleged offence and the fact that the appellants have by now served a term of imprisonment of over three years it would be unfair to subject them again to a long trial on the same charges. We therefore do not propose to make such an order.

In view of the conclusion we have reached, it has become unnecessary to consider and deal with the other grounds of appeal.

Appeal allowed.

Solicitors: *Leo Fernando*; *Vijay Perumal & Jeremiah*; *Donaldson & Burkinshaw*; *Mahadi Abu Bakar & Associates*.

Reported by *Terence Tan Bian Chye*

Golden Bay Realty Pte Ltd v Orchard Twelve Investments Pte Ltd

COURT OF APPEAL (SINGAPORE) – CIVIL APPEAL NO 38 OF 1986
SINNATHURAY AND CHUA JJ AND CHAO HICK TIN JC
23 MARCH 1989

Contract – Liquidated damages – Whether penalty – Contract in statutory form – Whether common law regarding penalties relevant – Construction of clause

Land Law – Sale of land – Failure to give notice to complete – Liquidated damages clause in contract – Sale of Commercial Properties Act (Cap 281, 1985 Ed) ss 5(1), (2), 7A(2), 9(3) & 10 – Sale of Commercial Properties (Amendment) Act 1980 – Sale of Commercial Properties Rules 1979, rr 6 & 7 – Planning Act (Cap 232, 1985 Ed), s 9(3)

The appellants sold a unit ('the unit') in a new building they had developed to the respondents. The respondents, after paying the instalments then due, took possession of the unit. The agreement for the sale and purchase of the unit ('the agreement') required the appellants to give the respondents notice to complete the sale by 31 December 1981 and required actual completion to take place 14 days after the notice. Clause 14 of the agreement provided for liquidated damages payable for late notice by the appellants. The appellants contended that they had not failed to give the requisite notice, that the clause was illogical and rendered the whole provision relating to completion uncertain and ambiguous and thus of no effect. It was also claimed that the clause was a penalty and thus should not be enforced. The appellants claimed that since the respondents were let into possession and were enjoying the benefits of the unit before completion, no liquidated damages should be payable by the appellants. The appellants also claimed that the delay in completion was due to the fault of their consultants, who were independent contractors, and hence the appellants should not be liable for the delay. The trial judge found for the respondents (see [1986] 2 MLJ 356). The appellants appealed against this judgment.

Held, dismissing the appeal:

(1) The expression 'if the vendor [the appellants] shall fail to give the said notice' only meant that the vendor did not give the said notice. The appellants' contention that the word 'fail' pointed to something in the nature of misconduct or want of diligence was rejected as such a construction would render cl 15 of the agreement (which relieved the appellants from paying liquidated damages for any delay in completion due to 'cause or causes over which [they] had no control') redundant.

(2) Although the sentence providing for liquidated damages referred to a failure to give notice by the date fixed for completion rather than a failure to give notice by the date fixed for the giving of notice, the expression was clear and meant the date fixed for the serving of notice to complete. Liquidated damages were thus to be calculated from 31 December 1981 to the date the notice to complete was served.

(3) The agreement was in the standard form prescribed by the Sale of Commercial Properties Rules 1979 (as amended in 1980) ('the Rules'). These Rules were made by the Minister pursuant to the powers conferred on him by the Sale of Commercial Properties Act 1979 ('the Act').

(4) The liquidated damages rate specified in the agreement of 9% per annum over 85% of the purchase price could not be said to be an extravagant or unconscionable amount.

(5) A purchaser of property purchases not just the physical possession of it but the legal title as well. Where the vendor of the property does not complete, the loss suffered by the purchaser may be difficult to quantify as it may vary. The liquidated damages clause was therefore not a penalty clause.

(6) The fact that the respondents had been enjoying possession of the unit did not in any way affect the obligation of the appellants to pay liquidated damages.

(7) The agreement followed the statutory form. The principles of liquidated damages have no application to a case where the parties are required by law to enter into a contract in the form prescribed. Unless it could be shown that the Rules are ultra vires the Act, they should be given effect to as the Act itself.

(8) When the appellants specified in the agreement that notice to complete would be given by 31 December 1981, they directly warranted that the subsidiary strata of title (SSCT) could be obtained by that date. They must be deemed to have included in their calculations the time required by their consul-